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REMARKS

Reconsideration of the above identified patent application is respectfully requested. Claims 1-21 are pending in the application.

I. Interview

Applicant thanks Examiner Okezie for the courtesies extended to Applicant's attorney during the telephone interview conducted on March 24, 2006. In the interview the Meinholdt reference was discussed in view of independent claim 1. Applicant's attorney pointed out Meinholdt does not include two arms that extend along a common plane. Those arguments are presented formally in this Response.

II. Invention Summary

The present invention is directed to a device configured for lifting and manipulating rocks, boulders, and other large objects primarily for landscaping applications. The device includes, among other things, first and second arms with upper and lower portions that extend along a common plane. The alignment between the upper and lower portions of the two arms addresses a number of deficiencies inherent in devices with misaligned arms. Misaligned arms can result in unwanted torque that can damage the pivot joint and may cause undesirable twisting of the object being lifted.

III. Art Rejections

Applicant respectfully submits that the subject matter of the claims is patentable over the art of record. Although the prior art discloses a wide variety of tong-like structures, it is respectfully submitted that the subject matter of the claims is not

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anticipated by or obvious in view of the prior art. It is worthwhile to note that a wide variety of patents have been granted to different tong-like devices configured for specific applications despite their general similarity. It is respectfully submitted that the distinctions between the claimed invention and the prior art devices are at least as material as the distinctions between the various patented prior art devices.

A. Section 102 Rejection Based on U.S. Patent 1,459,339 to Meinholdt

Claims 1-6 and 13 were rejected under 35 U.S.C. 102(b) as being anticipated by Meinholdt. Applicant respectfully traverses this rejection.

Meinholdt discloses a pair of misaligned ice tongs. The first tong 10 extends along one plane (shown in Fig. 1 and 4). A second tong 11 extends along a separate parallel plane (also shown in Fig. 1 and 4).

With respect to independent claim 1, Meinholdt does not disclose an upper portion and a lower portion of a first arm and an upper portion and a lower portion of a second arm that *extend along a common plane*. To the contrary, Meinholdt discloses two tongs that each extend along separate parallel planes.

By definition, parallel planes do not share a common plane. A plane is defined as “a surface containing all the straight lines that connect any two points on it.” <http://dictionary.reference.com/search?q=plane> last visited 3/27/06. Accordingly, parallel planes could never extend along a common plane because they are defined by surfaces containing all straight, and consequentially parallel, lines.

Although many planes which intersect or extend through the Meinholdt

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tongs may be conceptualized, the upper and lower portions of both tongs 10, 111 do not extend along a common plane as claimed. In light of the examiner interview, a few hypothetical interpretations of the claim term “extend along a common plane” are addressed below to reiterate what the claims do not permit when viewed in light of the specification. More specifically, a plane between the abutting surfaces of the tongs, a fictitious thick plane, or a slanted plane through both tongs are not proper interpretations of the claim term “extend along a common plane”, as would be understood by a person of ordinary skill in the art.

Where the surfaces of the two parallel tongs 10, 11 of Meinholdt abut one another (as shown in Fig. 4) they are not in a common plane, rather they are in adjacent planes. A vertical plane located between the edges of the abutting tongs (as shown in Fig. 4) either extends along one of the tongs or neither of the tongs. It is impossible for such a plane to extend along both tongs because that would require the tongs to occupy the same physical space.

Planes do not include any thickness, and as such, it is impossible for two parallel planes to extend along a single “thick” plane. Accordingly, a “thick” plane is fictitious and is not a claimed common plane. In fact, the notion of a “thick” plane leads to the illogical position that all objects extend along a common plane – as long as the plane is “thick” enough.

A slanted plane which intersects both Meinholdt tongs, is not a claimed common plane. The lower portion of the first tong, the upper portion of the first tong,

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the lower portion of the second tong, and the upper portion of the second tong cannot extend in the same direction as a slanted plane which intersects both tongs, no matter how the plane is slanted. The Specification describes how the arms extend:

[t]he curved upper arms permit the tongs to be fully opened to extend around large, bulky items. The jaws extend in a generally horizontal plane when fully opened and pivot upwardly as the tongs are closed. In this way, the weight of the item to be manipulated works to operate the tongs. Further, the offset pivot region permits the [upper portion] and [lower portion] of each of the arms to be in vertical alignment. Specification Pg. 2 Ln. 3 – Pg. 3 Ln. 4.

Accordingly, although a slanted plane would intersect and run through both Meinholdt tongs, such a plane would extend in a different direction than the upper portion of the first tong, the lower portion of the first tong, the upper portion of the second tong, and/or the lower portion of the second tong. Put another way, Meinholdt does not have any bends which facilitate the alignment of the four tong portions, so there is no way the four tong portions could extend along a common plane.

Because Meinholdt fails to disclose all of the elements of independent claim 1, it is respectfully submitted that the rejection based on Meinholdt under Section 102 should be withdrawn.

B. Section 103 Rejection Based on Meinholdt in view of Eckert

Claims 7, 8, 14-16, 19, and 21 were rejected under 35 U.S.C. 103 as being unpatentable over Meinholdt in view of Eckert.

The inadequacies of Meinholdt with respect to independent claim 1 are noted above. Eckert fails to resolve the inadequacies of Meinholdt. In particular, with

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respect to independent claim 14, Eckert does not disclose a pivot joint configured such that the upper portion and the lower portion of the first arm and the upper portion and the lower portion of the second arm extend through a common plane.

Applicant therefore submits that the rejection of claim 14 under Section 103 should be withdrawn.

C. Dependent Claims

The dependent claims further define Applicant's invention and are therefore even more clearly allowable than the claims discussed above.

IV. Conclusion

In view of the telephone interview and these remarks, Applicant respectfully submits that the present application is in condition for allowance. The Examiner is invited to telephone the undersigned if the Examiner disagrees in any regard. A Notice of Allowance is earnestly and respectfully requested.

Respectfully submitted,

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